



"We succeed only as we identify in life, or in war, or in anything else, a single overriding objective, and make all other considerations bend to that one objective."

- Dwight D. Eisenhower

Purchasing Update

Division of Purchasing, Idaho Department of Administration

Issue 8

September 4, 2002

Emergency Purchasing Authority

In past years, the Division of Purchasing had delegated a level of emergency purchasing authority to agencies, generally \$1,000 to \$5,000. With the changes to statutes, rules, and the increase in the no-bid limits, those dollar amounts are no longer valid and the need for emergency authority has dropped considerably. However, it is recognized that true emergencies do exist and agencies have a responsibility to react quickly to serious threats to public health, welfare or safety. For that reason, the Division of Purchasing has issued the following Policy Directive regarding emergency purchasing authority:

POLICY DIRECTIVE NO. 02-1 EFFECTIVE AUGUST 15, 2002

Pursuant to Idaho Division of Purchasing Rule 042.10 (IDAPA 38.05.01.42.10), a determination has been made that competitive solicitation procedures are impractical, disadvantageous, and unreasonable when applied to:

1. Extreme emergency situations that create an immediate and serious threat to public health, welfare or safety such as may arise by reason of natural disasters, epidemics, riots, terrorist incidents, equipment failures or other similar circumstances.

In an extreme emergency, agency personnel may take whatever purchasing action necessary to resolve the emergency, to be followed by an immediate written explanation and summary of the action taken from the agency director or deputy to the Administrator of the Division of Purchasing. The requirement for competitive solicitations pursuant to statute and rules for these purchases is waived.

The Division of Purchasing reserves the right to make final determination if an emergency situation exists. Emergencies that are not immediately life-threatening must be submitted to the Division of Purchasing for approval as per IDAPA 38.05.01 Rule 043.01

This exemption shall be effective until this policy directive is rescinded or replaced.

Agencies are cautioned that this policy directive is only applicable in cases of extreme emergencies where there is an immediate threat to public health, welfare or safety as described above. Situations that are not life-threatening or do not require an immediate action must still be submitted to the Division of Purchasing for approval and determination

of emergency status and any actions to be taken. Good judgment is to be exercised by state employees in determining that a true emergency exists.

To download a copy of this new Policy Directive for your *Purchasing Reference Guide* go to <http://www2.state.id.us/adm/purchasing>, click on "Agency Info" and then on "Publications" or "What's New." *Chapter 14, Emergency Purchases* of the *Purchasing Reference Guide* has also been updated to reflect this new information. A copy may be downloaded from the web site to replace the existing chapter in your binder.

Workman's Compensation Requirements

By Deputy Attorney General, Joanna Guilfooy

A question recently came up regarding what the Division's Standard Terms and Conditions require with regard to Workman's Compensation coverage. Section 7 (Contract Relationship) of the Standard Terms and Conditions provides that "[t]he Contractor will maintain *any applicable* workman's compensation insurance and will provide certificate of same if requested." (Emphasis added). The "any applicable" language recognizes that there are some persons or occupations that are exempt under Idaho law from a workman's compensation requirement.

One such exemption is found at Idaho Code § 72-212(7) for sole proprietors and certain partners or limited liability company members. If an agency is contracting with such entities, it cannot assume that such contractor carries workman's compensation coverage. If there is any question, agencies should ask. And, if an agency wants to be sure a contractor carries workman's compensation coverage, the agency should require it in its solicitation or contract documents.

Finally, an important related issue is whether the agency, despite a contract characterizing a contractor as an "independent contractor," could be characterized as an "employee" for workman's compensation or other purposes. The basic test of "employee v. independent contractor" is a question of control. That issue is too complicated to be addressed in this article, but if an agency is determined to exercise too much control over an independent contractor, the agency could be deemed an "employer" with some of the obligations of an employer. That could include the obligation to provide workman's compensation coverage or, unfortunately, liability for a workman's compensation related injury.

Agencies need to be aware of this issue and careful in this regard. You can discuss this issue with your Deputy Attorney General if you have questions or contact the Division of Purchasing.

Unordered Merchandise

by Attorney General Al Lance's Consumer Protection Unit

It has become more common for businesses to send unsolicited or unordered goods to consumers, businesses or state agencies, followed by a bill weeks later. Often, offices will receive unordered office supplies from businesses they have never dealt with before. Does the recipient have to pay for the unordered merchandise? The answer is no. If you are sent merchandise that you or your department did not order, Idaho law allows you to keep the shipment as a free gift. (Idaho Code § 28-2-329)

"If I keep the unordered merchandise do I have to notify the seller?" is a common question. Again the recipient is not obligated to send a letter to the seller but it is a wise precaution. Your letter may discourage the seller from billing you in the future and may help to clear up an honest mistake by the seller.

If you do receive billing notices, write to the business. State that you never ordered the item and, therefore, you have the legal right to keep the merchandise as a free gift. Request that they do not send you any more billings. It is a good idea to send your letter via certified mail, return receipt requested. Be sure to keep copies of your receipt and letter.

If you think your receipt of the unordered merchandise was the result of an honest shipping error, you should offer to return the merchandise at the seller's expense. Write to the seller and express that you will return the merchandise if you receive a postage-paid package within thirty days. Inform the seller that after the thirty days has passed, you reserve the right to keep the merchandise or dispose of it as you wish.

Because sending a bill for unordered goods or services violates the Idaho Consumer Protection Rules, you may wish to report any such billings to the Consumer Protection Unit.

Agency Purchasing Reports

This question was recently received from a state agency: "You have mentioned reporting requirements numerous times in the quarterly purchasing meetings, and I know our agency is not currently providing any information. Can you outline what information we need to be reporting, including a sample report? Is this information available anywhere on the purchasing website?"

Monthly purchasing reports are required from all agencies that have delegated authority from the Division of Purchasing. The report must include all purchases of goods or services between \$5,000 and the limits of the agency's delegated authority.

In addition, the report should include all non-competitive and exempted purchases such as: Correctional Industries, rehabilitation agencies, consulting, professional, and information technology contracts, federal government purchases, emergency purchases (Policy Directive No. 02-1), training and travel expenses related to training (Policy Directive No. 01-1), Center for Disease Control contracts (Policy Directive No. 01-2), and legal advertising, public service announcements, copyrighted materials such as books, videos, audio tapes considered to be sole source (Policy Directive 01-3).

The report need not include purchases from statewide contracts and Division of Purchasing issued purchase orders/contracts on behalf of the agency.

Agencies using the SiCommNet BASEC™ purchasing system to issue quotes and award purchase orders do not need to report that activity to the Division of Purchasing. However, all purchasing activity done outside of the electronic system must be reported.

More information and a spreadsheet developed for agency reporting is available in *Chapter 22 of the Purchasing Reference Guide* or on the purchasing web site under "Publications."

Statewide Contract Updates

Contracts SBPO 65, 66, 67, 68, 69 – Lamps and Ballasts Contracts. These contracts have been extended to October 10, 2002. They are currently being evaluated for renewal or rebid.

Contract SBPO 1059 – Standard Batteries – Vehicle Batteries. This contract was renewed for another year, expiring 9/21/2003.

Contract SBPO 1018 – Unisource – Paper & Plastics. Amendment 7, effective 8/23/02, revised pricing by reducing Schedule A and AB pricing by 2% for Kimberly-Clark items, and increasing Schedule B paper bag pricing by 10%.

WSCA Computers & Peripherals Contracts. Dell, Gateway, IBM, and HP are in the process of being renewed for another year. CompUSA will not be renewed. Status of the Compaq contract is uncertain at this time due to the merger with HP.

Contract SBPO 132 – Micron – Computers & Peripherals. This contract is in the process of being renewed for another year.